

1 THOMAS P. O'BRIEN
2 United States Attorney
3 CHRISTINE EWELL
4 Assistant United States Attorney
5 Chief, Criminal Division
6 DOUGLAS A. AXEL (CA Bar No. 173814)
7 Assistant United States Attorney
8 Chief, Major Frauds Section
9 1100 United States Courthouse
10 312 North Spring Street
11 Los Angeles, California 90012
12 Telephone: (213) 894-5420
13 Facsimile: (213) 894-0689
14 E-mail: doug.axel@usdoj.gov

15 KATHLEEN McGOVERN
16 Assistant Chief
17 Criminal Division, Fraud Section
18 U.S. Department of Justice
19 kathleen.mcgovern@usdoj.gov

20 Attorneys for Plaintiff
21 UNITED STATES OF AMERICA

22
23 UNITED STATES DISTRICT COURT
24 FOR THE CENTRAL DISTRICT OF CALIFORNIA

25
26 UNITED STATES OF AMERICA,) No. CR 03-620-TJH
27)
28 Plaintiff,) GOVERNMENT'S OBJECTIONS TO PRE-
v.) SENTENCE REPORT, SENTENCING
29) POSITION AND MOTION FOR
JOHN LAURIENTI, et al.,) DOWNWARD DEPARTURE UNDER
30) U.S.S.G. § 5K1.1 RE: JOHN
Defendants.) LAURIENTI
31 _____)
32) MEMORANDUM IN SUPPORT OF ITS
33) MOTION FOR DOWNWARD DEPARTURE
34) [filed under separate cover,
35) UNDER SEAL]

36 Sentencing date: August 31,
37 2009, 2:00 p.m.

38 Courtroom: 17, Hon. T.J.
39 Hatter, Jr.

40
41 Plaintiff United States of America, by and through its
42 counsel of record, the United States Attorney for the Central
43 District of California and the Fraud Section, Criminal Division,

1 U.S. Department of Justice, respectfully submits its objections
2 to the Pre-Sentence Investigation Report, sentencing position and
3 motion for downward departure under United States Sentencing
4 Guidelines ("U.S.S.G.") Section 5K1.1 regarding the sentence of
5 defendant John Laurienti.

6 The government's objections, sentencing position and motion
7 for downward departure are based upon the attached memorandum,
8 the downward departure memorandum filed separately under seal,
9 the files and records of this case, and any evidence and argument
10 that may be adduced at a hearing of this matter.

11 DATED: August 19, 2009

12 Respectfully submitted,

13 STEVEN A. TYRRELL
14 Chief, Fraud Section

15

KATHLEEN McGOVERN
16 Assistant Chief

17 Attorneys for Plaintiff
18 UNITED STATES OF AMERICA

19
20
21
22
23
24
25
26
27
28

1 **I. INTRODUCTION**

2 The government objects to the Pre-Sentence Investigation
3 Report ("PSR") to the extent that the sentence recommended by the
4 PSR, and certain factors upon which that recommendation is based,
5 are inconsistent with the plea agreement entered between the
6 government and John Laurienti ("J. Laurienti" or "Defendant") in
7 March 2005. In addition, the government moves the Court for a
8 downward departure under U.S.S.G. Section 5K1.1, based upon the
9 substantial assistance that J. Laurienti has provided to the
10 government, as further described herein and in the government's
11 memorandum in support of its motion for downward departure
12 ("downward departure memo") concurrently filed under seal.

13 Based upon the reasons explained below and in the
14 concurrently-filed downward departure memo, the government
15 respectfully requests that the Court find J. Laurienti's total
16 offense level to be **17**, resulting in a sentencing range of **24 -**
17 **30 months.**

18 **II. OFFENSE CONDUCT**

19 Defendant was the primary organizer and leader of a scheme
20 in which he and others engaged, for the purpose of self-
21 enrichment, in a conspiracy to conduct fraudulent securities
22 sales practices artificially to stimulate market activity in
23 securities known as "house stocks".

24 In 1998-2001, Hampton Porter Investment Bankers, LLP
25 ("Hampton Porter") was a small retail broker-dealer with a single
26 office in San Diego, California. The co-conspirators played
27 different roles: defendants J. Laurienti (brother of Bryan
28 Laurienti) and Greg Walker owned the firm, and Jim Green managed

1 the brokers. J. Laurienti managed Hampton Porter's operations,
2 and directed the activities of Green, the traders and retail
3 brokers, including trial defendants Bryan Laurienti, David
4 Montesano, Curtiss Parker and Donald Samaria. J. Laurienti left
5 Hampton Porter on October 31, 1999.

6 The fraudulent scheme focused on artificially-driven sales
7 activity in house stocks, which were, with one exception, thinly-
8 traded, speculative securities. The house stocks at the center
9 of the scheme were the securities of EMB Corporation (EMBU),
10 NetUSA (NTSA), Virtual Technologies (VTCO) and EnPointe
11 Technologies (ENPT) (which was more widely traded than the
12 others).

13 J. Laurienti negotiated purported "investment banking
14 agreements" with the house stock issuers (except ENPT, for which
15 Hampton Porter acted as a market maker) by which, in lieu of cash
16 compensation, Hampton Porter received some of the house stocks at
17 a significantly discounted price. The primary purpose of these
18 agreements was to unleash the brokers to sell house stocks to
19 their clients so that the price would increase. Hampton Porter
20 sold off some of the house stocks and used the proceeds to pay
21 brokers undisclosed bonus commissions to sell house stocks.

22 Green and J. Laurienti periodically convened broker meetings
23 at which they touted the house stocks and announced to their co-
24 defendants the bonus commissions to be paid for selling house
25 stocks. With the knowledge and agreement of J. Laurienti, Green
26 and the Hampton Porter brokers sold house stocks to clients
27 through a variety of false, misleading, and deceptive practices,
28 including, but not limited to, failure to disclose that the firm

1 enforced a "no net sales" policy respecting house stocks. This
 2 policy was enforced by, among other things, the payment of bonus
 3 commission on house stocks but not other stocks, the forfeiture
 4 of bonus commission if clients sold house stock, and the refusal
 5 to execute house stock trades unless the trade could be paired
 6 with another trade in a so-called "cross-trade".

7 Relatedly, J. Laurienti, on occasion, allowed or disallowed
 8 firm orders for the sale of house stock based upon his
 9 observations of the potential impact of the transaction on the
 10 price of the stock. Furthermore, J. Laurienti and Walker formed
 11 an entity known as Time Holdings and, through it, acquired house
 12 stock at low prices and, after the price increased due in part to
 13 Hampton Porter's sales efforts, sold the stock for a profit.

14 In prior sentencing briefing, the government submitted a
 15 loss calculation based upon analysis of thirty of defendants'
 16 former clients whom the government called as witnesses at trial
 17 and/or were contacted by investigators or otherwise provided to
 18 the government information during the investigation. See
 19 Declaration of Special Agent Scott A.H. Schofield (Doc. No. 552-
 20 2, filed on March 23, 2007). Using this methodology, the grand
 21 total house stock loss suffered by the thirty former clients was
 22 \$4,159,576.¹ Following supplemental memoranda filed by the
 23 government regarding loss, see, e.g., Government's Supplemental
 24 Memorandum Re: Restitution Order for Bryan Laurienti (Doc. No.
 25 723, filed on December 4, 2007), on February 12, 2009, the Court
 26 issued a final restitution order under seal as to the four trial

27
 28 ¹ The government did not include the losses to Adam Gilman
 and Troy Peters' victims, but did include the losses incurred by
 trial defendant Michael Losse's clients.

1 defendants, and ordered restitution in the amount of \$3,954,009.²

2 **III. THE PARTIES' PLEA AGREEMENT AND OBJECTIONS TO THE PSR**

3 A. The Plea Agreement

4 J. Laurienti entered a plea post-indictment, in April 2005.

5 Defendant pleaded guilty to a single count of conspiracy to
6 commit securities fraud. He and the government agreed upon the
7 following sentencing factors using the 2000 edition of the United
8 States Sentencing Guidelines ("U.S.S.G." or "the Guidelines"):

9 (a) more than one victim (+2), (b) organizer or leader (+4), and
10 (c) loss greater than \$2.5 million (+13). The total offense
11 level, subtracting 3 points for acceptance of responsibility, is
12 **22 (41 - 51 months)**.

13 B. Objections to PSR

14 The PSR recommends a total offense level of **25 (57 - 71**
15 **months)**, due to a loss figure above \$5 million (approximately
16 \$5.3 million) and the addition of an enhancement for mass-
17 marketing. The recommended term of incarceration is **60 months**.

18 While the government acknowledges that the Probation Office
19 is not bound by the parties' plea agreement, the government
20 respectfully objects to the PSR with respect to the mass-
21 marketing enhancement and loss calculation. The government is
22 bound by its plea agreement, which does not include a mass-
23 marketing enhancement and which limits the loss enhancement to
24 +13 (loss greater than \$2.5, up to \$5 million).

25 In addition, the government notes that PSR paragraph 31

26 ² The Court ordered restitution as to twenty-five victims
27 and the four convicted trial defendants as follows: B. Laurienti
28 (\$847,094); Montesano (\$314,803); Samaria (\$930,267); Parker
(\$91,931); and Parker and Samaria jointly and severally
(\$1,769,914).

1 refers to money laundering as part of "Offense Conduct".
 2 However, J. Laurienti did not admit to this conduct and the
 3 government agreed to dismiss the money laundering counts.

4 **IV. J. LAURIENTI'S SUBSTANTIAL ASSISTANCE**

5 The relevant factors under U.S.S.G. Section 5K1.1 are (a)
 6 the significance and usefulness of the defendant's assistance,
 7 taking into consideration the government's evaluation of same,
 8 (b) the truthfulness and completeness of information provided by
 9 the defendant, (c) the nature and extent of defendant's
 10 assistance, (d) any injury suffered, or any danger or risk of
 11 injury to the defendant or his family resulting from his
 12 assistance, and (e) the timeliness of defendant's assistance.
 13 U.S.S.G. § 5K1.1 (2000 ed.).

14 There is no question that J. Laurienti's assistance has been
 15 both significant and useful. His guilty plea a year and a half
 16 before trial saved the government substantial time, effort and
 17 cost in preparing for the same, and undoubtedly played a role in
 18 causing the guilty plea of broker Troy Peters. Although J.
 19 Laurienti was not asked to testify at trial, he cooperated
 20 against his co-defendants. Specifically, J. Laurienti met with
 21 the government, provided valuable background information, and
 22 responded to specific questions that arose prior to and during
 23 trial, particularly during the defense case. Some of his
 24 conspirators, such as the trial defendants, may be considered in
 25 some ways equally culpable as J. Laurienti because they dealt
 26 directly with, and made misrepresentations repeatedly to, the
 27 victim-investors.

28 Defendant has cooperated in other important ways, which the

1 government describes in a separately-filed memorandum, submitted
2 under seal.

3 Based upon J. Laurienti's substantial assistance and
4 assuming a total offense level of **22** as set forth in the plea
5 agreement, the government moves pursuant to U.S.S.G. Section
6 5K1.1 for a **5 level** departure to an offense level of **17**,
7 resulting in a sentencing range of **24 - 30 months**.

8 **V. SECTION 3553(a) FACTORS**

9 Title 18, Section 3553(a) lists certain factors for the
10 court's consideration in imposing sentence. In summary form,
11 those factors are (a) the nature and circumstances of the
12 offense; (b) the history and characteristics of the defendant;
13 (c) the need for the sentence to (i) reflect the seriousness of
14 the offense, promote respect for the law and provide just
15 punishment, (ii) afford deterrence, (iii) protect the public from
16 further crimes by defendant, and (iv) provide defendant with
17 necessary education or other correctional treatment; (d) the
18 kinds of sentences and Guidelines sentencing ranges available;
19 (e) policy statements of the Sentencing Commission; (f) the need
20 to avoid unwarranted sentence disparities among convicted
21 defendants with similar records; and (g) the need to provide
22 restitution. 18 U.S.C. § 3553(a).

23 Under the first of these factors, the government notes that
24 although J. Laurienti was an owner of Hampton Porter and the
25 primary organizer of the scheme, he did not have direct and daily
26 control over his conspirators after leaving the firm in October
27 1999.

28 The Court should also consider Laurienti's history and

1 characteristics during the almost ten years since he committed
2 the crimes to which he pleaded guilty. As far the government is
3 aware, Laurienti has not committed any other offenses since that
4 time.

5 Furthermore, in order to avoid unwarranted sentencing
6 disparities, it is appropriate that J. Laurienti's sentence
7 should be greater than the highest other cooperating defendant's
8 sentence (Walker, 18 months), and equal to or lower than the
9 lowest convicted trial defendant's sentence (Montesano, 30
10 months). The government believes that, given J. Laurienti's role
11 in the scheme as well as his substantial cooperation, the
12 principles of proportionality militate in favor of a sentence
13 within the range of **24 to 30 months**.

14 **VI. CONCLUSION**

15 For all of the foregoing reasons, the government
16 respectfully requests that the Court sentence J. Laurienti in
17 accordance with the government's sentencing position and motion
18 for downward departure.

19 DATED: August 19, 2009

20 Respectfully submitted,

21 STEVEN A. TYRRELL,
Chief, Fraud Section

22
23
24 KATHLEEN McGOVERN
Trial Attorney

25 Fraud Section, Criminal Division
U.S. Department of Justice

26
27 Attorneys for Plaintiff
UNITED STATES OF AMERICA